

- SUBJECT:** Information required on the notice for sale of property under a contract lien
- COMMITTEE:** Financial Institutions —committee substitute recommended
- VOTE:** 6 ayes — Solomons, McCall, Flynn, Guillen, Orr, Riddle
0 nays
1 absent — Chavez
- WITNESSES:** For — Tommy Bastian, Barrett Burke Wilson Castle Daffin and Frappier, LLP; Robert Doggett, Texas Low Income Housing Info Service
Against — None
- BACKGROUND:** HB 1493 by Solomons, enacted in 2003 by the 78th Legislature, allows a mortgage servicer to administer a foreclosure on real property on behalf of the lender. A mortgage servicer is the last person to whom a borrower (the mortgagor) has been instructed by the lender (the mortgagee) to send payments for the debt secured by a contract lien on an interest in real property. The lender is considered the mortgage servicer if no other servicer has been authorized.

A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at an auction at the county courthouse. The mortgage servicer must serve the borrower a notice of the date, time, and place of the foreclosure sale.
- DIGEST:** CSHB 1235 would remove the requirement that only the mortgage servicer must serve the written notice of the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

The notice of real property sale would disclose the name and address of the mortgagee or the address of the mortgage servicer if there was an agreement granting the mortgage servicer the authority to service the mortgage.

The bill would take effect September 1, 2005, and would apply to notices and the administration of a sale of real property under a contract lien

related to security instruments and other contracts executed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1235 would align statutory law with current practice to more efficiently administer the foreclosure process while maintaining the same services currently provided as protection to borrowers. In most cases, an attorney or other agent of the mortgage servicer serves notice of a foreclosure sale, yet the statute is not clear that another entity or individual may perform this function on behalf of the mortgage servicer. Removing the restriction that only the mortgage servicer may serve notice of a sale of foreclosure would clarify that these other entities familiar with the legal process associated with foreclosure could serve the notice on the servicer's behalf. This in no way would interfere with the borrower's receipt of the notice or the information that the notice contains.

CSHB 1235 would allow for flexibility in choosing the entity for which contact information was provided to the borrower. In reality, the mortgage servicer often is far more knowledgeable of the terms of the contract than the mortgagee, so it would be more appropriate to provide the address for the servicer should there be need for the borrower to communicate regarding the foreclosure. The name of the mortgagee would remain on the notice regardless of which address was provided, so the borrower still would know who ultimately held responsibility for the property.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The original bill would have required the notice to include the name and address of the mortgage servicer while the committee substitute would allow for the provision of the name and address of the mortgagee or the address of the mortgage servicer.

The companion bill, SB 1155 by Harris, has been referred to the Senate Business and Commerce Committee.